

TESTIMONY OF MICHAEL W. CUTLER
FOR THE HEARING TO BE HELD ON MARCH 9, 2005
BEFORE THE SUBCOMMITTEE ON MANAGEMENT, INTEGRATION AND
OVERSIGHT
“CBP AND ICE: DOES THE CURRENT ORGANIZATIONAL STRUCTURE
BEST SERVE U.S. HOMELAND SECURITY INTERESTS?”

Chairman Rogers, Ranking Member Meek, distinguished members of Congress, members of the panel, ladies and gentlemen. I welcome this opportunity to provide testimony today on the critical issue of determining if the current organizational structure of ICE and CBP best serves U.S. homeland security interests.

This issue is of great concern to me on two levels. First of all I am a citizen of the United States. Secondly, I am a former INS senior special agent, having worked for that agency for some 30 years.

We all know the significance of September 11, 2001, but how many Americans remember February 26, 1993? I believe that few Americans would readily remember that second date. Perhaps it is because we have a short memory as a nation. Perhaps it is because the events of that date were so drastically and horrifically eclipsed by September 11, 2001. We recently marked the 12th anniversary of the first attack on the World Trade Center which occurred on February 26, 1993. Six people lost their lives on that date by simply going to work. At least a thousand other people were injured and some estimates pegged the damage to the World Trade Center complex at being in excess of one half of a billion dollars. Our nation did little to defend itself after that attack and the terrorists, essentially of their own volition, waited for more than 8 years before attacking our nation at that location again. Therefore we should take little comfort that there have been no attacks committed within our country's borders since September 11, 2001. Indeed, we are continually warned about the potential for future attacks on our nation that may make use of Weapons of Mass Destruction. I fear a future attack might serve to eclipse the horrific attacks of 9/11.

The fact that the issue of re-organizing the agencies which bear the responsibility of securing our nation's borders is the focus of this hearing encourages me that this subcommittee is intent on making the protection of our borders and the enforcement of the immigration laws the priorities as well they should be. But I would implore you and your colleagues who represent us in both houses of

congress to act swiftly and resolutely to secure our nation's borders which at present are anything but secure. The clock is ticking and time is on the side of our nation's enemies. To quote the first two sentences of the preface of a report entitled, *"9/11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States,"*

"It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal."

The failure of our nation to impose even a modicum of control over who is able to enter our nation, even now, is a clear indication of the inability of the United States to protect its citizens from the potential of another terrorist attack. And it is not only terrorists who threaten our well-being. It has been estimated that 30% of the federal inmate population is comprised of aliens.

When I worked at the former INS, I became an advocate for the concept of what I have come to refer to as the "Immigration Law Enforcement Tripod. Under this concept the Border Patrol enforces the laws between ports of entry, the inspectors enforce the laws at ports of entry and the special agents, comprising the interior enforcement component of immigration law enforcement along with the deportation officers back up the inspectors and Border Patrol agents. I had recommended that the service side of the INS should be spun off as a separate entity that would rely on the special agents to conduct field investigations, when appropriate, to seek to uncover immigration benefit fraud, a critical issue that is all but ignored and neglected.

As we know, since the formation of the Department of Homeland Security the immigration benefits program has, indeed, been placed in a separate bureau and in addition, enforcement elements of the former INS have been merged with the U.S. Customs Service to form the Bureau of Immigration and Customs Enforcement. Additionally, other agencies have been added to the DHS; the Secret Service, the Transportation Safety Administration and the GSA Police. To further complicate matters, the current structure divides interior enforcement of the immigration laws, from the enforcement of the immigration laws along the border and at ports of entry. The inspectors and Border Patrol agents are now part of CBP or Customs and Border Protection. We need to fortify our nation's exterior borders but not create bureaucratic borders between these two law enforcement agencies that share responsibilities for a common mission.

It is my opinion, and the opinion of many of my former colleagues at the former INS, that this management structure is unwieldy and ineffective. The enforcement of the immigration laws is critical and shares little with the other agencies which have been combined with the former INS. The mission of each of these agencies is critical, but also unique. The mission of the former U.S. Customs Service bears little in common with the work and priorities and orientation of the former INS. In fact, prior to the merger, Customs was a division of the Treasury Department and the INS was a division of the Department of Justice. Its primary responsibility was to prevent contraband from entering the United States and to collect tariffs and duties. Customs is responsible for the movement of goods and currency across our nation's borders.

The INS was concerned with the movement of people across our nation's borders and has been involved with issues that more closely paralleled what the employees of State Department, the Labor Department, and the FBI are involved with. To re-enforce this point, I would point out that while it was relatively rare for INS agents to work with their Customs counterparts it was relatively common for us to work with agents of the other agencies I have just mentioned. The primary similarity between Customs and the INS was the border. Once you remove the border from the equation the differences become obvious and profound.

Since the merger of INS into ICE the new special agents who are now being trained are no longer even receiving Spanish language training. It is estimated that some 80% of the illegal alien population is Spanish speaking. This language training was an integral part of the curriculum for all new enforcement officers at the old INS. You cannot investigate people you cannot communicate with. It is worth noting that most of the Special Agents-in-Charge of the ICE offices came from the U.S. Customs Service further eroding the immigration mission. I have come to think of the current situation as the "Customization of immigration law enforcement." I have been told that few, if any employers of illegal aliens were fined under the auspices of the employer sanctions program in the United States last year. Additionally, the investigation of immigration benefit fraud has been relegated, from what I have been told, to being pursued by very few field agents and computer systems.

We are currently engaged in a war on terror where control of our nation's borders is critical to the outcome of this battle where the stakes are so high. In order for the borders to be secured we need to have a coordinated enforcement program that creates a seamless effort from the borders to the interior. This can best be done, in my estimation, by putting the CBP and ICE under one roof. It is also essential that

separate chains of command be established for the immigration enforcement program with specific training and funding and accountability. This is the era of the specialist. One size does not fit all. It is critical that our nation gains control of its borders and the entire immigration bureaucracy if we are to protect our nation from illegal immigration. Illegal immigration has a profound impact on more other aspects of this nation than does any other issue. It impacts on everything from education, the environment, health-care and the economy to criminal justice and national security. It is vital, in my view, that this mission be effectively dealt with. The current structure does not provide the framework or leadership to enable this to happen. Morale among the former INS personnel is at an all-time low. Clearly this situation needs to be remedied. A reorganization such as I outlined would represent a major step in the right direction.

I look forward to your questions.